

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RUTH A. SMITH

Claimant

VS.

LIBERTY FRUIT COMPANY, INC.

Respondent

Self-Insured

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Docket No. 216,943

ORDER

Respondent requested the Appeals Board to review the preliminary hearing order dated July 21, 1997, entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

The Administrative Law Judge awarded claimant temporary total disability and medical benefits for a left upper extremity injury. Respondent requested the Appeals Board to review that order and contends claimant failed to prove the left arm injury was related to claimant's August 21, 1996, work-related accident. In the alternative, respondent argues claimant's present need for medical treatment is due to some unknown, subsequent incident which occurred sometime in March 1997 rather than the work-related accident. In her brief, claimant questions the Appeals Board's jurisdiction to review this proceeding.

The issues before the Appeals Board on this review are:

- (1) Does the Appeals Board have the jurisdiction and authority to review Judge Foerschler's preliminary hearing findings?
- (2) Is claimant's left hand injury directly related to or the natural and probable consequence of her August 21, 1996, work-related accident?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds as follows:

The preliminary hearing order should be reversed to the extent it grants workers compensation benefits for the alleged left hand injury.

The parties stipulated claimant sustained personal injury by accident arising out of and in the course of claimant's employment on August 21, 1996. Respondent admits that claimant injured her right upper extremity in that accident. Claimant sought a preliminary hearing to seek temporary total disability and medical benefits for the left upper extremity. Claimant contends she injured the left arm as a natural and probable consequence of the right arm being immobilized.

K.S.A. 44-534a, as amended, restricts Appeals Board review of preliminary hearings to the following issues: (1) whether claimant sustained personal injury by accident, (2) whether the accident arose out of and in the course of employment, (3) whether timely notice and claim were made, and (4) whether certain defenses apply.

The question whether claimant has sustained a left arm injury as a result of the August 1996 accident is intricately related to the issue of whether claimant has sustained personal injury by accident. Therefore, the Appeals Board has the jurisdiction and authority to review the Administrative Law Judge's preliminary hearing findings regarding that issue. However, the Appeals Board does not have the authority at this stage of the proceeding to reweigh the evidence and determine if claimant is temporarily and totally disabled. Therefore, the Appeals Board must decline respondent's request to review that issue at this juncture.

On August 21, 1996, claimant fell while working for the respondent and landed on her right hand. Claimant eventually came under treatment from orthopedic surgeon Lanny W. Harris, M.D., who ultimately performed right carpal tunnel release surgery on claimant in late 1996. Claimant testified the doctor immobilized her right hand after surgery and placed it in a cast for approximately eight or nine weeks. During direct examination claimant testified she began experiencing symptoms in her left hand during the period her right hand was casted. However, on cross-examination claimant testified she developed left hand symptoms before she had the right carpal tunnel surgery and, thus, before she was casted. The latter version is more in line with the medical records.

This proceeding is notable for its inconsistencies. First, claimant has testified inconsistently regarding when her left hand symptoms began. Secondly, claimant alleges her left hand injury is a natural and probable consequence of her right hand injury. However, no medical evidence was presented which addressed that possibility. Instead, the only medical evidence addressing the causation issue is from Dr. Harris's letter dated

April 28, 1997, where he writes that claimant has bilateral carpal tunnel syndrome as a result of her repetitive work for respondent. But, that opinion is not persuasive when considering Dr. Harris made that diagnosis in October 1996, a point in time when claimant had worked for the respondent a total period of less than one week. Dr. Harris's opinion also seems inconsistent with claimant's testimony that she began experiencing the left arm symptoms while off work for treatment of the right arm.

Based upon the present state of the record, the Appeals Board finds claimant has failed to prove the left hand injury is either the natural and probable consequence of the right hand injury or otherwise directly traceable to the August 1996 work-related accident. Therefore, claimant's request for workers compensation benefits for the left hand injury should be denied at this time.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing order dated July 21, 1997, entered by Administrative Law Judge Robert H. Foerschler should be, and hereby is, reversed and set aside to the extent it grants workers compensation benefits for an injury to the left upper extremity.

IT IS SO ORDERED.

Dated this ____ day of September 1997.

BOARD MEMBER

c: Joseph R. Ebbert, Kansas City, KS
Kip A. Kubin, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director